

# **REPORT OF THE WALPOLE CHARTER REVIEW COMMITTEE**

**9/26/05**

## Background

The 2003 Spring Annual Town Meeting passed Article 40 which called for the formation of a Committee to review the town's Charter in light of certain recommendations made by the Massachusetts Department of Revenue in its "Town of Walpole Financial Management Review" dated September 2002 (the "DOR Report"). Article 40 directed that the Committee be comprised of nine members, one elected by the Representative Town Meeting Members from each of the town's eight precincts and one to be appointed by the Town Moderator. Pursuant to Article 40, the following individuals were so elected and appointed:

Precinct 1	Mary Dugdale
Precinct 2	Susanne Murphy
Precinct 3	Clement Boragine
Precinct 4	Mark Trudell
Precinct 5	Christopher Timson
Precinct 6	Steven Davis
Precinct 7	Louis ("Ted") Hoegler
Precinct 8	Carol Lane
Moderator Appointee	Thomas Jalkut

The Charter Review Committee met for the first time on May 22, 2003. At that meeting, Thomas Jalkut was elected as Chairman and Christopher Timson was elected as Vice Chairman. Over the course of the next two years, the Committee held more than 20 additional meetings, all of which were posted and open to the public. Interim reports concerning the status of the Committee's efforts were given at the Fall Annual Town Meeting in 2003, and the Spring Annual Town Meeting in 2004. At the Fall Annual Town Meeting in 2004, representatives voted to give the Committee an extension of time beyond the eighteen months originally specified in Article 40 to finish its work.

## Procedure

A town's charter is its constitution and sets forth the form, structure and organization, including the powers and duties of elected and appointed officials, of the town. It is not a document which can or should be amended easily. Generally speaking, Home Rule Charters, such as Walpole's, may be amended in accordance with the statutory framework set forth in Chapter 43B of the General Laws. This statute requires a public hearing, a two-thirds vote of the

Town Meeting, notice of the proposed amendments to the Department of Housing and Community Affairs, approval by the Attorney General and approval by the voters.

There are certain provisions of a charter, however, such as the mode of election of the Selectmen and other officials, which cannot be changed by the statutory amendment procedure outlined above. These changes can only be accomplished as a result of a proposal by an elected Charter Review Commission.

A Home Rule Charter may also be amended by special act of the Legislature. This can be a more streamlined process, involving Town Meeting approval, a bill passed by the Legislature and approval by the voters of the town. The special act method of amending a charter is not subject to the same content limitations as the Chapter 43B procedure discussed above and was the method by which Walpole's Charter was substantially amended and updated in 1999. Town Counsel has recommended that the special act procedure be followed with respect to any changes that Town Meeting approves as a result of this Committee's work as well.

### Scope of Review

The first question that the Committee had to wrestle with was the breadth of its charge. It would be fair to say that several members of the Committee were of the opinion that the review by the Committee should be confined solely to the specific recommendations made in the DOR Report. Others members, noting that Recommendation #1 in the DOR Report called for Walpole to review its Charter in order to "provide the community an opportunity to study *all* the committees, boards and offices of the town," favored a more expansive role. This dichotomy persisted throughout the Committee's deliberations and the lack of a clear consensus acted as a check on the Committee's willingness and ability to consider some of the more far-reaching proposals that came before it. For example, members of the Board of Selectmen initially advocated for a number of structural changes which they argued would make town government more streamlined, more accountable and better able to deal with the increasing level of sophistication of the reporting obligations and other burdens facing municipalities today. The Selectmen's proposed changes would have resulted in substantially all of the town's non-school department employees reporting to the town administrator, in one way or another, rather than to part-time elected or appointed boards or officials. The Committee was told that these changes would make lines of responsibility clearer to the public, might possibly improve the delivery of services, and would bring most all of the town's financial functions under one roof. It was also suggested that having one set of standards used for employee reviews would help boost employee morale.

Notwithstanding these claims, it was clear that a substantial minority – if not an actual majority - of the Committee was of the opinion that the current organizational structure of town government had served Walpole well and should not be changed. These members did not believe the criticism in the DOR Report warranted making the town administrator the "CEO" nor did they think it wise to give up what the checks and balances in the existing administrative

structure. Given that reality and recognizing the futility of trying to persuade Town Meeting and ultimately the voters to adopt changes which did not enjoy broad support within the Committee, it was decided early on not to forward any recommendation to Town Meeting that failed to garner at least a two-thirds vote of the Committee itself.

During the past two years, the Committee met at least once with representatives of the Planning Board, the Board of Assessors, the Board of Sewer and Water Commissioners, the Board of Health, the Conservation Commission and the Library Trustees, as well as with the Town Administrator, Finance Director, Town Clerk, the Police and Fire Chiefs, the Animal Control Officer, the Health Agent and the Emergency Management Director. Not surprisingly, many of them also disagreed with the organizational changes proposed by the Selectmen. While conceding that “turf wars” may have gotten in the way of good government in the past, everyone who came before the Committee, including the Town Administrator and the Finance Director, noted the extraordinary level of cooperation and mutual respect that characterizes how the different boards and committees currently deal with one another and with the Town Administrator’s office and the Finance Department. It was also noted that the new salary scale adopted by the 2004 Spring Annual Town Meeting will mitigate some of the problems that had been caused by the use of different standards in employee reviews.

### Proposed Changes

The following are the changes to the Charter that are being recommended by the Committee. In each case, the motion to recommend carried by at least a two-thirds majority of those present:

1. Section 2-8(C)

Delete the words **“Permanent Building Maintenance Advisory Committee”**.

*Explanatory Note: We were advised that the functions of this Committee are being handled on a day to day basis by the Superintendent and his staff. Moreover, projects involving the expenditure of more than \$5,000 must be vetted by the Capital Budget Committee. According to the Board of Selectmen, this Committee has been dormant for some time and should not be identified in the Charter.*

2. Section 2-8(D)

Delete the words **“the office of”** in the first sentence so it reads **“if the Moderator is absent, the Town Clerk shall have the power to call the meeting to order ...”**

*Explanatory Note: We were unsure as to what was intended by the words “the office of” or what they added.*

3. Section 2-9(D)(5)

Delete “**shall include, with each report**” and substitute the following:

**“shall report its recommendations in writing prior to each Annual or Special Town Meeting. A copy of each report of the Finance Committee shall be distributed to all Town Meeting Representatives and shall be posted on the Town of Walpole’s website not later than seven days prior to the Town Meeting. At the same time, copies of each report shall also be made available to the public at the office of the Town Clerk, the Walpole Public Library and the Walpole Senior Center. Each report”**

Delete “**to each residence**” and substitute the words “**shall include**” in their place.

*Explanatory Note: There is a substantial cost involved in mailing the Finance Committee report to every residence in Town. Other towns in recent years have decided to put information of this nature on their websites to save expense. Recognizing that not all residents have access to the Internet, we have suggested that hard copies also be available to the public at the above locations. This change, if adopted, will also require a change to the town by-laws which continue to require distribution to each residence.*

4. Section 2-9(E)(4)

Strike out the word “**mailed**” and substitute the words “**made available**” and strike out the word “**by**” and substitute the words “**in the office of**”.

*Explanatory Note: Despite the provision in the Charter requiring that the Rules as amended be mailed to all RTMs, it isn’t done and this change merely recognizes that reality.*

5. Section 2-9(G)(5)

Add a comma after the word “**vehicle**”

Strike out the word “**like**” and substitute the words “**cemetery or pond**”

*Explanatory Note: We assumed “**vehicle**” and “**equipment**” were meant to describe different things. We added cemeteries and ponds as the capital budget committee often deals with requests for capital expenditures to enhance them as well.*

6. Section 2-9(H)

Strike out the expression “(C)(3)” and substitute therefor the expression “(D)(3)”

*Explanatory Note: Typo.*

7. Section 2-12

Strike out the first paragraph thereof in its entirety and substitute the following:

**“At least seven (7) days prior to the session of town meeting at which any collective bargaining agreement is presented for approval or funding, the Town Meeting Representatives and Board of Selectmen shall be furnished with a written summary explaining the revisions contained therein. In addition to the foregoing, at least seven (7) days before being presented for such approval or funding, a copy of the entire agreement shall be placed on file with the office of Town Clerk for inspection by any Representative Town Meeting Member or resident and shall be posted on the town of Walpole’s website. Such agreements shall remain posted on the website until at least five (5) days after the town meeting is dissolved.”**

*Explanatory Note: There are two issues here. The first is cost. Many collective bargaining agreements have changes on only a few pages. It is expensive to photocopy the entire agreement and circulate the same to the RTMs. Making it available in the Town Clerk’s office and on the website should give all who want to see the body of the agreement, and not just the summary, an opportunity to do so. More fundamentally, at present the Charter appears to require that copies of the agreements be provided to the RTMs at least seven days before the “town meeting” at which they are to be considered, not seven days before the actual night during town meeting on which they are to be brought forward for action. The proposed change makes it clear that the seven days refers to the night, not the beginning of the town meeting itself. This is in fact how Walpole has been interpreting the Charter in recent years.*

8. Section 3-2(B)(4)(a) Change “civil defense director” wherever it appears to “emergency management director”

*Explanatory Note: This change brings the Charter into conformity with current usage.*

9. Section 3-2(B)(4)(c)

Delete the words “Street Naming Committee”.

*Explanatory Note: The Selectmen advised the Committee that this Committee's function is better handled by Police and Fire and ultimately the Planning Board.*

10. Section 3-6

Delete **“by the Commonwealth Commissioner of Community Affairs”** and substitute in its place **“as provided in the General Laws of the Commonwealth.”**

*Explanatory Note: We thought it was safer to refer to the General Laws.*

11. Section 3-8(B)(1)

Substitute for the words **“Department of Public Health”** the words **“Department of Environmental Protection”**.

*Explanatory Note: Conforms to current title.*

12. Section 3-8(B)(2)

Substitute for the words **“the general responsibility for”** the words **“exclusive charge and control of”** and strike the expression **“, and drains”**. Add the words **“or his/her designee”** after **“Town Administrator”** in the last sentence of the second paragraph thereof.

*Explanatory Note: The Sewer and Water Commissioners requested the first two changes. They noted that they are given “exclusive charge and control” over water matters but only “general responsibility” for sewers. We opted to go along with “exclusive charge and control” for both. As for drains, we were told that they do not, in fact, maintain storm drains and that this is a highway function. The final change in this Section reflects the fact that the Superintendent of the Sewer and Water Dept. sits in for the Town Administrator at all meetings of the Commissioners.*

13. Section 3-9(B)(1)

Add after **“The Board of Library Trustees”** the following: **“shall appoint, and may remove consistent with the provisions of the General Laws, a Library Director for an indefinite term and shall”**

*Explanatory Note: The Charter says that the Trustees are responsible for “staffing.” We thought it should be clear that this includes the Library Director.*

14. Section 4-1

Delete the sentence: **“The Town Administrator in office at the effective date of this Charter shall be entitled to retain any accrued leave earned before said effective date.”**

*Explanatory Note: This provision became moot with the resignation of former Town Administrator .*

15. Section 4-2

Add, in the second paragraph, after the expression **“following his/her appointment”** the following:

**“, unless the Board of Selectmen shall vote to waive such residency requirement, provided, however, that such waiver shall be effective only as long as the town administrator resides in a city or town located not more than fifteen (15) miles from Walpole.”**

Replace the word **“temporary”** with the word **“Acting”** in the fifth paragraph thereof and change **“four (4) months”** to **“six (6) months”** and **“thirty (30) day”** to **“six (6) month”** in that paragraph.

*Explanatory Note: The Charter requires that the Town Administrator be “domiciled within the Town within twelve months following his/her appointment.” The Committee believes that this provision may limit the pool of qualified candidates and should be modified as recommended. The Committee also believes that, if the premise underlying the requirement, i.e., the town would be better governed if the town administrator had to live in the town, is valid, we have the wrong person in the job. We also think the 15 mile limitation should ensure that the town administrator would be able to get to his office quickly enough in the event of an emergency. The changes in the 5<sup>th</sup> paragraph reflect the fact that a search for a new town administrator might conceivably take longer than a total of five months.*

16. Section 4-3(A)

By adding after **“Finance Director”** the following: **“Assistant Town Administrator”**

*Explanatory Note: This change recognizes the existence of the position of Assistant Town Administrator in the Charter.*

17. Section 4-3(B)

By adding after “**Finance Director**” the following: “**Assistant Town Administrator**”, and by deleting the expression “**; and the positions of Plumbing Inspector, Wire Inspector, and Gas Inspector, appointed by the Building Commissioner with the approval of the Town Administrator**”

*Explanatory Note: See 17 above. Also, takes away the need for the Selectmen to approve the appointment of the inspectors.*

18. Section 4-3(A), Section 4-3(B) and Section 4-1(A)

By substituting for the expression “**Inspector of Buildings**” each place it appears the expression “**Building Commissioner**”.

*Explanatory Note: This change is intended to bring the Charter into conformity with current usage.*

19. Section 4-3(A), Section 4-3(B) and Section 4-4(A)

By substituting for the expression “**Health Agent**” the expression each place it appears the expression “**Health Director**”.

*Explanatory Note: The Board of Health requested this change. It will not expand the authority of the office nor make the individual acting in this capacity eligible for a higher salary step..*

20. Section 4-4(A)

Delete “**and the Board of Selectmen**”

*Explanatory Note: Conforms to 17 above.*

21. Section 4-4(B) **Delete in its entirety**

*Explanatory Note: Conforms to 17 and 21 above.*

22. Section 4-4(C), (D), (E)



Renumber as **4-4(B), 4-4(C) and 4-4(D)**

23. Section 6-6

Delete the word “**Finance**” from title

*Explanatory Note: Typo.*

24. Section 7-6(A)(2) and (3)

By adding immediately before the word “**grounds**” in each Paragraph the word “**specific**”

*Explanatory Note: Probably only cosmetic but Committee felt some strengthening of recall provisions were desirable.*

25. Section 7-6(A)(3)

By striking out the period at the end of this section and adding the following language: “**provided, however, such recall petition must be filed with the Town Clerk within sixty (60) days of the date the recall petition was initially issued by the Town Clerk.**”

*Explanatory Note: This recommendation resulted from a meeting with Marilyn Contreas of the Department of Community Affairs. Ms. Contreas is responsible for reviewing changes in municipal charters that are submitted for approval. She pointed out that the existing Charter imposes no deadline for turning in signatures after the recall petition is taken out and she recommended that we correct this.*

26. Section 7-7

By adding, immediately before the period at the end of the second paragraph thereof, the following: “**per charge**”.

*Explanatory Note: This was a request of the Board of Selectmen. They argued that limiting suspensions to a maximum of 15 days does not give town officials sufficient flexibility to deal with employee discipline.*

Respectfully submitted,

Thomas Jalkut, Chair

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